

HALL & ASSOCIATES

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September 21, 2015

Via FOIA Online

Regional Freedom of Information Officer
U.S. EPA, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029
Facsimile (215) 814-5102
Email: R3FOIA@epa.gov

Re: Freedom of Information Act Request for Records Associated with Cost Estimates on Previous Wissahickon Creek TMDL FOIA Requests_____

To Whom It May Concern:

This is a request for a public records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 2. This FOIA request is being submitted on behalf of the various municipal POTWs and MS4 communities affected by the proposed Wissahickon Creek Watershed TMDL.

Background

The Wissahickon Creek located northwest of Philadelphia, PA is a tributary to the Schuylkill River. A draft total phosphorus (“TP”) TMDL for the Wissahickon Creek Watershed was released by EPA Region 3 (“Region 3”) for public comment in May 2015. According to the draft TMDL document, the TP endpoint used in the TMDL is based on a conceptual model wherein TP stimulates excessive algal growth that, in turn, adversely affects aquatic life (particularly macroinvertebrates). The justification for targeting TP in this TMDL is based upon three documents: Development of Nutrient Endpoints for the Northern Piedmont Ecoregion of Pennsylvania: TMDL Application (November 20, 2007), Development of Nutrient Endpoints for the Northern Piedmont Ecoregion of Pennsylvania: TMDL Application – Follow-up Analysis (July 18, 2012), and Evaluation of Nutrients as a Stressor of Aquatic Life in Wissahickon Creek, PA (February 23, 2012). These summary documents did not contain the underlying databases and analyses used to render the various conclusions in the documents (e.g., any water quality modeling reports, the databases modified by Tetra Tech to reach its recommendations in the endpoint documents, etc.). EPA informed the public that the

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Agency would release the additional TMDL background documentation in response to specific FOIA requests.

Consequently, Hall & Associates, on behalf of and representing affected Wissahickon communities, submitted a series of FOIA requests seeking background data and documentation used by EPA or its contractor to reach the conclusions in the Draft TMDL. The FOIA tracking numbers associated with these requests are:

- EPA-R3-2015-008860
- EPA-R3-2015-008848
- EPA-R3-2015-008831
- EPA-R3-2015-008843
- EPA-R3-2015-008819
- EPA-R3-2015-008817
- EPA-R3-2015-008815
- EPA-R3-2015-008853
- EPA-R3-2015-008851
- EPA-R3-2015-008861
- EPA-R3-2015-008855

On September 17, 2015, 70 days after the requests were submitted, Hall & Associates received an aggregated cost estimate of \$15,656.00 for EPA to address all eleven FOIA requests. (Attachment). EPA demanded assurances that such costs will be paid, before any further action will be undertaken to provide the public with access to the requested information.

Request for Existing Agency Documents

This request seeks the basis and background documents generated by EPA Region 3 in preparing the cost estimate stated in the September 17, 2015 correspondence (i.e., the documentation that the Region used to determine the hours and costs associated with addressing each of the 11 FOIA requests). Such documentation should specifically include the following agency records:

- 1) *Existing* records detailing how the \$15,656.00 cost estimate and hours were calculated for the eleven (11) FOIA requests listed above.
- 2) *Existing* records providing the cost and hours breakdown for each of the eleven (11) individual FOIA requests listed above.
- 3) The basis upon which EPA concluded that the submission of 11 separate FOIA requests was done to avoid exceeding the individual \$250 cost cap for demanding assurance of payment.

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Please promptly duplicate the records that are responsive to this request and send it to the undersigned at the above address. As EPA is required under FOIA to provide the public with the basis of its fee demands, there is no basis to charge for the release of such information or to withhold such documentation from the public under any application of privilege.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary document is duplicated.

Respectfully,

/s/ **Benjamin M. Kirby**

Benjamin M. Kirby
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ATTACHMENT –

Sept. 17, 2015 Letter, Evelyn S. MacKnight, EPA R3 to Bill Hall
Re: Freedom of Information Request: EPA-R3-2015-008815, EPA-R3-2015-008817,
EPA-R3-2015-008819, EPA-R3-2015-008831, EPA-R3-2015-008843, EPA-R3-2015-
008848, EPA-R3-2015-008851, EPA-R3-2015-008853, EPA-R3-2015-008855, EPA-
R3-2015-008860, EPA-R3-2015-008861



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 17 2015

William T. Hall
Hall and Associates
1620 I Street, NW, Suite 701
Washington, D.C. 20006-4033

Re: Freedom of Information Request: EPA-R3-2015-008815, EPA-R3-2015-008817, EPA-R3-2015-008819, EPA-R3-2015-008831, EPA-R3-2015-008843, EPA-R3-2015-008848, EPA-R3-2015-008851, EPA-R3-2015-008853, EPA-R3-2015-008855, EPA-R3-2015-008860, EPA-R3-2015-008861

Dear Mr. Hall:

I am writing in regard to your Freedom of Information Act (FOIA) requests referenced above in which you requested various documents pertaining to EPA's development of the draft Total Phosphorus TMDL for the Wissahickon Creek Watershed. In those requests, you indicated that you were entitled to a waiver of fees. On July 16, 2015, EPA made an initial determination denying your fee waiver for the eleven requests. On August 21, 2015, and in response to your appeal of the July 16, 2015 decision, EPA made a final determination denying your requests for a fee waiver.

Pursuant to 40 CFR § 2.107(e), because we have determined that the cost to process your requests will be more than \$25.00 and more than the amount that you indicated that you would be willing to pay, we are obligated to notify you of the estimated cost of processing your requests. Since we have determined or estimated that the cost to process your requests will be more than \$250.00, we must receive your assurance of payment pursuant to 40 CFR § 2.107(j)(2). Upon receipt of your assurance of payment, we will complete the processing of your requests and forward the requested documents to you.

Because the eleven requests for information were made on the same day, are seeking materials likely kept in the same offices by the same record custodians, and are seeking materials related in subject matter, under EPA regulations at 40 CFR 2.107(i), EPA may presume that the multiple requests have been made to avoid fees. Pursuant to that regulation, and under the circumstances described above, EPA is aggregating the eleven requests into one request for purposes of calculating and providing one cost estimate covering all eleven requests.

Below is the estimated cost for processing your requests. These estimates include search and review time. The actual amount to process your requests may be more or less than the estimated amounts as shown below. When we have completed processing your requests, we will provide you with a bill which reflects the actual amount of time spent in processing your requests.



Office of Standards, Assessment and TMDLs

480 hours search/review time at \$28.00 per hour professional personnel = \$13,440.00

20 hours review at \$41.00 per managerial personnel = \$656.00

Office of Regional Counsel

54 hours review at \$28.00 per hour managerial personnel = \$1512.00

Water Protection Division

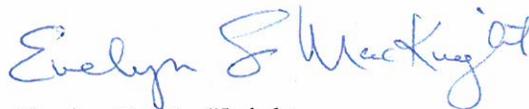
3 hours scanning time at \$16.00 per hour clerical personnel = \$48.00

Total: \$13,440.00+\$656.00+\$1512.00+\$48.00=\$15,656.00

If you would like to narrow the scope of your requests and thus reduce the cost incurred for documents responsive to them, please contact Ashley Toy at (215) 814-2774. If we have not heard from you by October 1, 2015, we will assume that you are no longer interested in pursuing the requests referenced herein and will consider the requests closed. If at a later date you are still interested in pursuing your requests, you may resubmit a FOIA request to FOIAonline or to the Freedom of Information Officer at the above address.

If you have any questions, please do not hesitate to contact Ashley Toy at (215) 814-2774.

Sincerely,



Evelyn S. MacKnight

Associate Director

Office of Standards, Assessment and TMDLs

cc: Rita Tate, FOIA Officer